

REMARKS

In the Office Action, the abstract was objected to. Claims 1-4 were rejected under 35 U.S.C. §102(b) as being anticipated by JP 58-191955 per the International Preliminary Report on Patentability dated February 28, 2006. Claims 5-8 were objected to as being dependent upon a rejected base claim.

Independent claim 1, as presently amended, with respect to the features of the claimed apparatus have been further highlighted, i.e.:

- the feature relating to the plate 12 being an agitation plate having a rest designed to have the bottom of the test-tube resting therein and
- the feature of the optical detection means having as detection zone a predetermined zone above the plate 12.

The claimed invention relates to a powered device designed to be used in analysis laboratories to apply an agitation motion to the test tubes containing liquid samples which have then to be sent to the analysis devices.

The use of such kind of agitation devices is particularly advantageous because the test tube can be directly held by the operator's hand, thereby allowing a very quick operation as there is no need to precisely insert the test tube into a housing in the device, firmly hold it in position and then remove it from the housing. According to the innovative principles of the claimed invention,

operation of the agitation plate (vibrating support) is started by optical detection means able to detect the presence of a test tube in a predetermined zone above the support before the test tube reaches the support itself.

JP 58-191955 discloses a device having a structure and working fully different from that of the claimed invention.

In fact, apart from JP 58-191955 disclosing an apparatus wherein the test tube is not subjected to a vibratory motion but to a rotational motion, it is essential to underline that, contrary to the principles of the claimed invention, in JP 58-191955 the test tube 1 must be fully inserted into a hole 5b of a rotating support 5 and firmly held in place by resting of the upper collet 3b of the test tube on the upper surface of support 5 before enabling rotation of the test tube around its axis. It is apparent that such device cannot allow a quick operation.

To sum up, while in the device according to the claimed invention the optical detection means 17, 117 detect the presence of the test tube when this latter enters a predetermined zone above the support (agitation plate 12), i.e., when the bottom of the test tube is approaching the support itself, in JP 58-191955 the presence of the test tube is detected by the optical means 11a, 11b, 12 below the support 5, i.e., after the test tube has been fully “inserted into the seat 5b and set correctly at the prescribed position” for carrying out the colorimetric analysis (see

English abstract of JP 58-191955 attached to the International Search Report, paragraph “CONSTITUTION,” first two lines).

Moreover, in the English abstract of JP 58-191955 it is not mentioned that the optical sensor causes the motor 10 to start. Indeed, the object of JP 58-191955 is to light up the light projector 11a only when a test tube is present: the light projector 11b illuminates the sensor 12 to detect presence of the test tube, thereby causing lighting up of the projector 11a.

In fact, the circuit illustrated in Figure 2 of JP 58-191955, which shows the connections of the light projectors 11a, 11b and sensor 12, does not comprise any output for controlling the motor 10.

Furthermore, even the feature requiring that the agitation plate has a rest for resting support of the bottom of the test tube cannot be considered anticipated by JP 58-191955 because, as above explained, the test tube of JP 58-191955 is held in place by its upper collet 3b resting on the upper surface of the rotating support 5.

In view of the above, it is Applicant’s opinion that JP 58-191955 cannot anticipate the invention as claimed by claim 1 of the present application.

Moreover, further considering that, as above mentioned, JP 58-191955 discloses an analysis device wherein a test tube is firmly inserted in a seat,

whilst the subject-matter of the claimed invention is an agitation device wherein the bottom of a test tube is merely resting on a rest member while being held by an operator's hand, it is Applicant's opinion that JP 58-191955 cannot give any useful suggestion as to obtain the claimed invention without inventive skill.

Taking into account what is above discussed, it is submitted that independent claim 1 as currently amended should be considered patentable over JP 58-191955.

The present arguments and amendments to claim 1 were submitted also to the European Examiner during the corresponding European examination procedure and they positively resulted in allowance of the granted European patent EP 1 732 675.

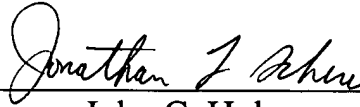
In addition, allowable dependent claims 5, 7 and 8 have been placed in independent claim form and should also be considered allowable.

Based on the foregoing amendments and remarks, it is respectfully submitted that the present application should now be in condition for allowance. A Notice of Allowance is in order, and such favorable action and reconsideration are respectfully requested.

However, if after reviewing the above amendments and remarks, the Examiner has any questions or comments, he is cordially invited to contact the undersigned attorneys.

Respectfully submitted,

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